



Memorandum

To : Mr. Verne Walton
Chief, Assessment Standards Division

Date: April 8, 1994

From : James M. Williams

Subject: Special Assessment Appeal Treatment for the FDIC

In your memo of February 17, 1994 to Richard Ochsner, Assistant Chief Counsel, you asked us to review an assertion by Property Research Ltd. of Portland, Oregon that the Federal Deposit Insurance Corporation is entitled to special federal guarantees in regard to assessment appeals of properties that it has acquired via default. In its letter of February 5, 1994 to the San Bernardino County Assessor, Property Research states:

As you know, I am seeking to have the revised value of \$5,500,000 for the 1992-93 tax year also be effective for the 1991-92 tax year despite the fact that the county sent out a supplemental notice which was not appealed within sixty days of that mailing.

Pursuant to federal statute, the appeal rights of the F.D.I.C. are not governed by state law, but rather federal law. I have highlighted the portion of the statute that states "notwithstanding the failure of any person to challenge an assessment under state law of such properties value, such value, and the tax thereon, shall be determined as of the period for which the tax is imposed.

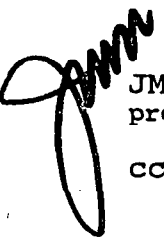
The reasonable interpretation of this language is that the F.D.I.C. has extraordinary appeal rights, recognizing that the F.D.I.C. acquired billions of dollars of real estate throughout the country which had previously traded in the marketplace at sometime grossly inflated values. It appears that Congress intended to strike a balance that continue the policy of not exempting F.D.I.C. real estate from local assessment and taxation but also recognized that the F.D.I.C. should not be required to pay property tax liabilities based upon assessed values which exceeded the market value of those properties as of the relevant assessment dates.

I have verified the statute quoted above as Section 15 of the Federal Deposit Insurance Act of August 9, 1989 (Section 219 of Public law 101-73, 103 stats 262) which is found in Title 12 of the United States Code, section 1825. Initially I did not agree that it necessarily meant what Property Research asserted but then I found *F.D.I.C. v. Lowery*, 12 F.3d 995 (10th Cir. 1993) which the reporter states the co-holding of the case in headnote 2:

Authority of Federal Deposit Insurance Corporation (FDIC) to obtain reassessment of its property for tax purposes extended to valuations made in years preceding its acquisition of title and included valuations underlying tax liens which had already attached. Federal Deposit Insurance Act, section 2[15](b)(1), 12 U.S.C.A., section 1825(b)(1).

Although the United States 10th Circuit Court of Appeals covers a different geographical set of states (California is in the 9th circuit), any attempt to completely reverse this ruling would require an appeal to the United States Supreme Court.

There is some likelihood that the supreme court could conclude that congress has exceeded its authority by running roughshod over state procedural controls but that would not do us much good. Congress does have clear authority to completely exempt parcels once FDIC has acquired title so you might say that it has traded this right for the right to insure that it is paying taxes on a proper valuation. Based on the circuit court's application of the statute, I would conclude that the position taken by Property Research Ltd. is correct. The Federal Deposit Insurance Corporation does have the right to challenge the valuation of property held by their immediate predecessor of title, notwithstanding that the California appeal period has expired. In the example submitted it appeared that the assessor was willing to stipulate to the year that was still open, so it would also seem that stipulation would be most expedient for the prior year.



JMW:jd
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cc: Ms. Jennifer Willis, MIC:70
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February 2, 1999

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Honorable Carl A. Bontrager
Siskiyou County Assessor
Court House, 311 4th Street
Yreka, California 96097

Re: Admission of Evidence Obtained by Assessment Appeals Board Members

Dear Mr. Bontrager:

This is in reply to your letter of December 10, 1998 addressed to Assistant Chief Counsel Larry Augusta in which you request a legal opinion regarding the introduction of personal knowledge as evidence by appeals board members. Specifically, you are asking for Board staff's view on a question posed by a new member of your county's appeals board, which I quote from your letter as follows: "Can we, as board members, introduce comparable sales that we have personal knowledge of into the testimony at the appeals hearings even to the extent that we can order the Assessor's Office to go back and analyze them?" You state that your county counsel advised that members could be permitted to do so but, in your view, that advice is contrary to statutory and case law and to the Board's position in its Assessment Appeals Manual based on interpretation of those authorities.

As set forth below, it is our view that an individual appeals board member may not introduce comparable sales evidence at an appeals hearing. The property tax statutes and regulations require appeals board members to decide applications based solely on evidence presented by the parties or obtained by the board acting as a body. Therefore, if a board member wishes to hear or to obtain evidence not provided by the parties, he or she must make a motion to the appeals board and, if approved, the board will exercise its statutory authority to obtain such evidence.

Law and Analysis

An assessment appeals hearing is an adjudicatory proceeding for deciding disputes between taxpayers and assessors governed by various property tax statutes and by interpretive regulations, known as property tax rules. Those statutes and rules require that an appeals board hearing and deciding an application may act only on relevant evidence which is presented by the parties or which is requested by the board acting as a body.

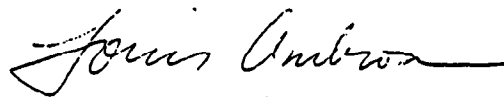
Revenue and Taxation Code section 1610.8 imposes a mandatory requirement that "the applicant" shall establish the full value of the property by independent evidence. Likewise, Property Tax Rule 321 requires that the applicant must present independent evidence of full value. There is no parallel provision permitting a board member to present evidence on a matter known to him or her. If a board wishes to hear testimony or evidence not presented by one of the parties then, pursuant to section 1609.4, the board "may subpoena witnesses and books, records, maps, and documents and take evidence in relation to the inquiry." In our view, this section empowers an appeals board, and not an individual board member, hearing an application to take such action.

Further, section 1605.4 refers to "the taking of evidence" by an appeals board, but there is no provision for the presentation of evidence by an individual board member. Rule 307, subdivision (d) provides that a notice of hearing shall advise the taxpayer that the board is required to find the taxable value of the property from the evidence "presented at the hearing". Again, there is no indication that a board is authorized to find taxable value based on evidence obtained by or within the personal knowledge of any board member.

Based on the foregoing provisions, we conclude that an appeals board member who wishes to introduce evidence or testimony not presented by the parties must make a motion to that effect to the board. If the board approves the motion, then pursuant to section 1609.4 the board may issue subpoenas or take other action necessary to obtain the evidence or testimony.

The views expressed in this letter are only advisory in nature; they represent the analysis of the legal staff of the Board based on present law and the facts set forth herein, and are not binding on any person or public entity.

Very truly yours,



Louis Ambrose
Tax Counsel

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cc: Ms. Wynona Hale - Sacramento County Assessment Appeals Board
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PROPERTY TAXES